THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

W.P. No.16739 of 2005

DATE: 20-09-2005

Between:

T. Umrao Devi Bantia W/o. G.P. Bantia,
aged about 72 years, R/o. Premises No.207,
Sikh Village, Secunderabad. .. Petitioner

AND

Appellate Authority-cum-I Additional Chief Judge,
City Civil Court, Secunderabad & another

.. Respondents

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

W.P. No.16739 OF 2005

ORDER: (Per Hon'ble Mr. Justice B. Sudershan Reddy)

The petitioner is the owner and claims to be in possession of the premises bearing No.207, Sikh Road, Secunderabad, which is a residential house.

The 2nd respondent – Secunderabad Cantonment Board vide its tax bill, dated 17-01-2002, raised a supplementary bill for the period from 01-04-2000 to 31-03-2002 proposing to realize the tax from the petitioner such as house tax, conservancy tax, water tax, lighting tax and library cess and called upon the petitioner to pay a sum of Rs.7,41,578/- enhancing the annual rental value of the house to Rs.7,00,000/- from that of Rs.6,00,000/-. However, there appears to be some dispute as to the nature of the premises with which we are not concerned for the present in this writ petition.

Aggrieved by the action of the 2nd respondent, the petitioner herein preferred appeal under Section 84 of the Cantonments Act, 1924 (for short 'the Act') before the 1st respondent on several grounds, which is numbered as C.M.A. No.38 of 2002. The 2nd respondent filed I.A. No.3056 of 2003 in the appellate Court with a prayer to reject the appeal preferred by the petitioner herein on the ground that the petitioner failed to comply with the mandatory requirements stipulated under Section 87(b) of the Act insofar as deposit of the disputed tax amount is concerned. The petitioner herein filed a detailed counter affidavit opposing the application filed by the 2nd respondent herein mainly contending that rejecting the appeal by the Court, as such, does not arise and that the conditions of right of appeal contained in Section 87 of the Act are directory in nature and not mandatory. Other objections were also raised. The appellate Court vide its order, dated 28-03-2005, allowed the petition filed by the 2nd respondent herein and accordingly rejected the appeal on the ground that the petitioner herein failed to deposit the disputed tax amount which is a condition precedent for maintaining the appeal.

In this writ petition, learned counsel for the petitioner, Sri Vedula Venkataramana, *inter alia,* submits that the conditions of right of appeal contained in Section 87(b) of the Act do not apply for maintaining the appeal but are only for hearing of the appeal. According to the learned counsel for the petitioner, the appellate Court committed a serious irregularity in dismissing the appeal. The appellate Court cannot dismiss the appeal for the reason of non-compliance of the requirements stipulated under Section 87(b) of the Act. According to the learned counsel for the petitioner, the appeal could not be heard and decided, unless the appellant, in a given case, complies with the requirements stipulated under Section 87 of the Act but the appeal itself cannot be dismissed. That at any rate, learned counsel contends that the appellate Court, in law, could not have directed the petitioner herein to deposit the disputed tax amount as prayed for by the 2nd respondent herein.

We find substantial force in the submission made by the learned counsel for the petitioner.

The subject matter that arises for consideration is not *res integra,* particularly, but squarely covered by the authoritative decision of the Supreme Court in ***St. Mary's School v. Cantonment Board,*** wherein the very
Section 87(b) of the Act had fallen for consideration.
The Supreme Court by relying on its earlier decision in ***Shyam Kishore v. Municipal Corporation of Delhi,*** which deals with the similar provision of appeal i.e. Section 170(b) of the Delhi Municipal Corporation Act 1957, wherein it is held,
"... We see nothing wrong in interpreting the provision as permitting the appellate authority to adjourn the hearing of the appeal thus giving time to the assessee to pay the tax or even specifically granting time or instalments to enable the assessee to deposit the disputed tax where the case merits it, so long as it does not unduly interfere with the appellate court's calendar of hearings. His powers, however, should stop short of staying the recovery of the tax till the disposal of the appeal. We say this because it is one thing for the judge to adjourn the hearing leaving it to the assessee to pay up the tax before

the adjourned date or permitting the assessee to pay up the tax, if he can, in accordance with his directions before the appeal is heard. In doing so, he does not and cannot injunct the department from recovering the tax, if they wish to do so. He is only giving a chance to the assessee to pay up the tax if he wants the appeal to be heard. It is, however, a totally different thing for the judge to stay the recovery till the disposal of the appeal; that would result in modifying the language of the proviso to read: 'no appeal shall be disposed of until the tax is paid'. Short of this, however, there is no reason to restrict the power unduly; all he has to do is to ensure that the entire tax in dispute is paid up by the time the appeal is actually heard on its merits. We would, therefore, read clause (b) of Section 170 only as a bar to the hearing of the appeal and its disposal on merits and not as a bar to the entertainment of the appeal itself", held that "*any appeal filed under Section 84 of the Cantonment Act shall be dealt with, insofar as deposit of tax is concerned (i.e., with respect to the requirement of Section 87) in the light of and in accordance with the above observations and clarifications*."

That a bare reading of the above decision would make it abundantly clear that the appellate Court cannot insist requiring the appellant to deposit the amount as is required under Section 87(b) of the Act. The hearing of the appeal can be postponed or adjourned leaving it open to the appellant to pay the tax before the adjourned date, if he can.

It is thus clear, the pre-condition for hearing of the appeal and its disposal is that the appellant is required to comply with the conditions stipulated under Section 87(b) of the Act. To put it plainly, unless the appellant complies with the conditions under Section 87(b) of the Act, the appeal preferred by him/her cannot be heard and disposed of on merits. By the same time, it is made clear that the appellate Court cannot pass an order directing an unwilling appellant to deposit the disputed tax amount on the pain of dismissal of the very appeal itself. It means that in the absence of deposit of the disputed amount, the appellate Court shall adjourn hearing of the appeal and shall not hear the appeal and grant any relief to the appellant by deciding the appeal on merits preferred under Section 84 of the Act.

We fail to appreciate as to why the 2nd respondent which is not injuncted by the Court not to proceed against the petitioner had chosen to file such application in the appellate Court leading to passing of the impugned order compelling the petitioner herein to deposit the disputed tax amount.

Nothing prevented the 2nd respondent from proceeding against the petitioner for realization of the disputed tax amount. Mere pendency of the appeal does not operate as any impediment on the powers of the 2nd respondent to realize the disputed tax amount. It is difficult to discern as to why the 2nd respondent had chosen to file such application and invited the impugned order.

The impugned order, in our considered opinion, suffers from incurable infirmities apart from being contrary to the judgment of the Supreme Court in ***St. Mary's School***
(Supra 1). The impugned order is accordingly set aside.

However, the petitioner's prayer to direct the 1st respondent to hear and dispose of the appeal preferred by the petitioner in C.M.A. No.38 of 2002 filed under Section 84 of the Act without insisting her to deposit the disputed house property tax is misconceived. The petitioner is not entitled for any such relief for the reason that if she wants her appeal to be heard and disposed of by the appellate Court on merits, she is required to comply with the conditions stipulated under Section 87(b) of the Act by depositing the disputed tax amount. That part of the prayer is accordingly rejected.

Accordingly, the Writ Petition is partly allowed without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:20-09-2005.

S. ANANDA REDDY, J

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